

factors in making a determination of whether or not to provide services.

Section 1611.4(b)

The language of this section was revised to clarify its meaning, but no substantive changes are intended. The Committee felt that while the recipient's annual income ceiling did need to be reviewed annually to insure that the program had considered the current figures in appendix A, programs should not be required to raise their income levels consistent with the changes in Appendix A.

The Committee discussed whether it should consider raising the LSC maximum for income ceilings from the current 125% of the Federal Poverty Guidelines to take account of the reality that those guidelines have not kept up with the cost of living nationally and that people need substantially more than 125% of those guidelines to live above poverty. At the same time, the Committee acknowledged that limited resources prevent recipients from serving most of the applicants for service who are eligible at 125% of the official poverty level. They also discussed whether they should revisit the issue of including some differential to take account of urban and rural differences in the cost of living. Section 1007(a)(2)(A) of the LSC Act requires LSC to take account of family size, rural and urban differences as well as substantial cost-of-living variations. At present there are different levels depending on family size, and there are higher income levels to take account of the acknowledged higher cost of living in Alaska and Hawaii, but there is no differential for urban versus rural poverty. The Committee decided that it would recommend no change for purposes of revising part 1611, but recommended that the Board look into the issue and decide whether it wished to make any changes. The Committee welcomes comments on these issues.

Section 1611.4(c)

This section was revised to reflect the fact that the "cost of living" factor is the only factor listed in this provision that is specifically required by the Act to be considered by recipients in setting the annual income ceiling. Other factors that are relevant to a particular recipient must also be considered but it will be up to the recipient to determine which other factors are relevant to its service area.

Section 1611.4(d)

This subsection is based on § 1611.3(d) of the current rule. Additional language was added to

emphasize that the recipient's annual income ceiling is applicable only to legal assistance supported by LSC funds. Legal assistance supported in whole by non-LSC funds may be provided to applicants for service who do not meet LSC income guidelines. Other funders may set their own income eligibility levels. Nevertheless, to the extent that LSC funds are used to support the legal assistance, only financially eligible clients may be served.

The Committee wanted the Commentary to make clear that this section does not prevent a recipient from using LSC funds to support its intake system, even though some applicants for service will clearly be ineligible. Performing intake to determine eligibility is not the same as providing legal assistance. Nor does the section prohibit recipients from providing some limited service to applicants who are financially ineligible. For example, if after completing intake, a recipient finds an applicant to be ineligible, the recipient may provide the applicant with referrals to other sources of legal or other assistance that could be helpful, may provide pamphlets or other written materials that are available to assist the applicant, or may provide some simple, basic advice that would enable the applicant to handle his or her own problem without legal assistance.

Deletion of Current § 1611.5 Determination of Eligibility

The provisions of this section have been incorporated into other sections of the proposal to simplify the regulation and give it a more logical and easy-to-follow structure.

Section 1611.5 Authorized Exceptions to the Recipient's Annual Income Ceilings

This section includes subsections from §§ 1611.4 and 1611.5 of the current regulation, but they have been reordered and revised. These factors, which may be considered here, should be viewed as limitations on an applicant's use of his/her income that would permit a recipient to deem the applicant as falling below the income ceiling.

Section 1611.5(a)

The changes were designed principally to simplify the language of the regulation, although the revisions contained in the introductory language to the section do provide recipients with slightly more flexibility in deciding which applicants for service whose unadjusted income exceeds 125% of the official poverty line nevertheless may be

deemed to be financially eligible. The current regulation permits consideration of applicants for service whose unadjusted income is below 150% of the national LSC eligibility level, or 187.5% of the official poverty line. This proposal simplifies the calculation and raises the outside limit for unadjusted income to 200% of the official poverty line. The introduction also makes it clear that the applicant must still meet the asset limit test in § 1611.3(b) and that the recipient should still consider the factors in § 1611.3(c) before deciding whether to serve any particular person.

Section 1611.5(a)(1)

The language of this subsection was revised to make it clear that recipients could serve persons up to 200% of poverty if the person was seeking to maintain benefits as well as to secure them in the first instance.

Section 1611.5(a)(2)

This new subsection was added to permit recipients to serve persons with incomes up to 200% of poverty to secure or maintain disability benefits, but only if without those benefits the person would be otherwise eligible. The Committee felt that for many disabled persons, disability benefit programs provided only subsistence support and those individuals should be treated in the same way as those seeking to secure or maintain benefits available on the basis of financial need. The Committee also recognized, however, that many disabled individuals who are eligible for disability benefits may not be particularly economically disadvantaged, and should not be eligible for legal assistance simply by virtue of their eligibility for those benefits.

Section 1611.5(a)(3)

This subsection lists those factors that a recipient should consider in making a determination that a particular applicant for service whose income is between 125% and 200% of poverty should be deemed eligible for LSC-funded services. The factors are, with several changes discussed below, the same as those factors that appear in § 1611.5 (b) of the current regulation.

Paragraph (B) has been revised to make it clear that if a person's medical expenses are reimbursed, through insurance or a government program such as Medicare or Medicaid, those reimbursed expenses cannot be deducted in determining eligibility; if, however, if a person has paid bills and is awaiting future reimbursement, those expenses could be deducted. In that case, when the actual reimbursement is